BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JEFFREY S. KELLEY Claimant)
VS.)) Docket No. 228,95
NEIL GOSS) DOCKET NO. 220,930
Respondent AND)
KANSAS WORKERS COMPENSATION FUND)

ORDER

Claimant appealed the preliminary hearing orders dated January 30, 1998, and February 11, 1998, entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

The Administrative Law Judge found claimant was an employee of respondent but had failed to prove that respondent had sufficient payroll to bring the parties within the provisions of the Workers Compensation Act. Upon that basis, the Judge denied claimant's request for benefits. Claimant disagreed with those decisions and filed these appeals. The only issues now before the Appeals Board are (1) was claimant an employee or independent contractor and (2) were the payroll requirements met to bring the parties within the provisions of the Workers Compensation Act?

FINDINGS OF FACT

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

- (1) On November 25, 1997, the claimant, Jeffrey S. Kelley, injured himself when he fell from a ladder while installing a storm window during a painting project he was performing for Neil Goss.
- (2) Mr. Kelley began painting for Mr. Goss approximately two weeks before the accident. Mr. Goss furnished the supplies and ladder, paid Mr. Kelley \$14 per hour, and

retained the right to terminate him. Mr. Kelley used his own paint brush and drop cloth. Mr. Goss directed Mr. Kelley in the manner the house was to be painted.

(3) Copies of tax returns indicate Mr. Goss filed as a sole proprietorship and paid the help he hired in his painting business \$9,066 in 1995 and \$18,625 in 1996. Because he believes those whom he hires are subcontractors, he does not have workers compensation insurance.

CONCLUSIONS OF LAW

The Administrative Law Judge found that Mr. Kelley was an employee of Mr. Goss rather than an independent contractor. The Appeals Board agrees with that conclusion.

The Judge also found that Mr. Kelley failed to prove Mr. Goss had or reasonably estimated a \$20,000 payroll as required by K.S.A. 1997 Supp. 44-505 before the Workers Compensation Act is applicable. The Appeals Board also agrees with that conclusion.

The preliminary hearing orders should be affirmed.

WHEREFORE, the Appeals Board finds and orders that the preliminary hearing orders dated January 30, 1998, and February 11, 1998, entered by Administrative Law Judge Robert H. Foerschler should be, and hereby are, affirmed.

IT IS SO ORDERED.	
Dated this day of March 1998.	
BOARD MEMBER	

c: Michael R. Wallace, Shawnee Mission, KS J. Paul Maurin, III, Kansas City, KS Robert H. Foerschler, Administrative Law Judge Philip S. Harness, Director